



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0764]

RIN 1625-AA09

Drawbridge Operation Regulation; Black Warrior River, AL

AGENCY: Coast Guard, DHS.

ACTION: Final Rule

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SUMMARY: The Coast Guard is adding a special operating regulation governing the Alabama Gulf Coast Railroad (AGR) vertical lift span (Yo-Yo) bridge across the Black Warrior River, mile 219.0, at Demopolis, AL. The bridge is operated automatically and currently remains in the open-to-navigation position and only lowers for the passage of trains. This rule proposes to codify the current operating schedule of the bridge as a special operating regulation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2012-0764 and are available by going to <http://www.regulations.gov>, inserting USCG-2012-0764 in the "Keyword" box, and then

clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504-671-2128, email David.m.frank@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code

#### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard is only codifying the known and accepted operation of the drawbridge that has been automated for over 50 years. Publication of the automated operation of the drawbridge will not modify the present operation of the bridge and mariners will notice no changes in the way the bridge operates for the passage of vessels. Therefore, it is unnecessary to provide the notice and comment period for this rule.

For similar reasons, under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register (FR). The bridge has been operating under the automated system for over 50 years. Mariners presently understand that the bridge will remain in the open position and only be lowered for the passage of

trains. They also understand that no tender is located at the bridge and the operation of the bridge is automated. The bridge is commonly referred to as the "Yo-Yo" bridge because of the automated operation of the bridge. This rule only codifies the operation of the automated bridge in the Code of Federal Regulations (CFR). Therefore, providing a 30 day notice before making this rule effective is unnecessary.

#### B. Basis and Purpose

The AGR vertical lift span (Yo-Yo) bridge across the Black Warrior River, mile 219.0, at Demopolis, AL, is currently maintained in the open-to-navigation position, closing only for the passage of rail traffic. The bridge has a vertical clearance of 18 feet above the Bridge Reference Elevation for Navigation Clearances (BRENC), elevation 79.8 feet NGVD, in the closed-to-navigation position and 62.9 feet above BRENC in the open-to-navigation position.

Due to the limited number of trains using the rail line in this area, maintaining the bridge in the fully open-to-navigation position and only lowering the bridge for rail traffic is the preferred operating schedule. The system for operation of the bridge is an automated system in place since 1961. The method of operation for the

bridge to remain open to navigation and to signal and then close for the passage of a train and then to automatically reopen has been understood by mariners for over 50 years. Due to this method of operation, the bridge is commonly known as the Yo-Yo Bridge. Because this operating schedule has been in place for over 50 year and is understood and accepted by local traffic, the bridge owner requested that the Coast Guard publish the current operating schedule. This operating schedule allows vessels to transit the waterway as normal while permitting the bridge to lower for train traffic after ensuring that no vessels are approaching the bridge.

The automated system for operating the bridge allows the bridge to operate efficiently while remaining untended and in the open-to-navigation position. This rule codifies this practice by publishing the known and accepted operating schedule under 33 CFR 117.42.

#### C. Discussion of Final Rule

Under 33 CFR part 117.5, bridges are required to open on signal for the passage of vessels except as otherwise authorized or required. The Yo-Yo Bridge is currently untended and maintained in the open-to-navigation position and operates automatically to close for the passage of trains. As the bridge is presently operating as an

automated drawbridge and this method of operation has been previously approved by the US Army Corps of Engineers when they had oversight of the permitting and operations of drawbridges. Title 33 CFR 117.42 (b) requires that, if approved, a description of the full operation of the remotely operated or automated drawbridge will be added to subpart B of this part.

This present method of operation is known and understood by the local waterway users, but this operating schedule is not reflected in the CFR. This rule publishes the known operating schedule, codifying the schedule as a Special Operating Requirement under 33 CFR part 117, Subpart B.

The automated operation of the draw of the AGR vertical lift span (Yo-Yo) bridge across the Black Warrior River, mile 219.0, at Demopolis, AL is as follows:

(a) The draw shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic.

(b) When rail traffic approaches, railroad track circuits will initiate the automatic bridge opening and closing sequences. (Estimated duration that the bridge

will remain closed for passage of rail traffic is 10 to 15 minutes per closure.)

(c) Upon detecting approaching rail traffic, the track circuits will initiate bridge closing warnings consisting of continuous horn blowing and the navigation lights changing to flashing yellow. Photo-electric (infrared) boat detectors will monitor the waterway beneath the bridge for the presence of vessels.

(d) At the end of a six-minute warning period, if no vessels have been detected by the boat detectors, the bridge lowering sequence will automatically proceed taking approximately two minutes to complete. As soon as the bridge leaves the up position, the horn will silence but the navigation lights change to flashing red.

(e) Upon passage of the rail traffic, the bridge will automatically open unless another movement is detected. The navigation lights will continue to flash red until the bridge has returned to the full open position at which time they will change to steady green.

(f) The bridge can also be operated from two locked trackside control locations (key releases) on the approach spans, one on each side of the movable span.

(g) To request openings of the bridge when the lift span is in the closed-to-navigation position, mariners may

contact the AGR via VHF-FM channel 16 or by telephone at 205-654-4364.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule codifies the current operating schedule for the AGR bridge which is already understood, known and accepted by the local bridge and waterway users. Very few vessels will be impacted as the bridge remains open at all times except to allow rail traffic to pass.

##### 2. Impact on Small Entities

This rule would affect the following entities, some of which may be small entities: the owners or operators of

vessels wishing to transit the Black Warrior River above mile 219.0 with vessel air drafts that would require the bridge to be open to navigation for them to pass safely through the bridge site.

This action will not have a significant economic impact on a substantial number of small entities because the bridge remains open at all times except to allow rail traffic to pass.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## 10. Protection of Children

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This rule is not a 'significant energy action' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Section 117.106 is added to read as follows:

§117.106 Black Warrior River.

The draw of the Alabama Gulf Coast (AGR) vertical lift span (Yo-Yo) bridge across the Black Warrior River, mile 219.0, at Demopolis, shall operate as follows:

(a) The draw shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic.

(b) Railroad track circuits will initiate the automatic bridge opening and closing sequences. (Estimated duration that the bridge will remain closed for passage of rail traffic is 10 to 15 minutes.)

(c) Upon detecting an approaching train, the track circuits will initiate bridge closing warning consisting of

continuous horn blowing and the navigation lights changing to flashing yellow. Photoelectric (infrared) boat detectors will monitor the waterway beneath the bridge for the presence of vessels.

(d) At the end of a six-minute warning period, if no vessels have been detected by the boat detectors, the bridge lowering sequence will automatically proceed taking approximately two minutes to complete. As soon as the bridge leaves the up position, the horn will silence but the navigation lights change to flashing red.

(e) Upon passage of the train, the bridge will automatically open unless another movement is detected. The navigation lights will continue to flash red until the bridge has returned to the full open position at which time they will change to steady green.

(f) The bridge can also be operated from two locked trackside control location (key releases) on the approach spans, one on each side of the movable span.

(g) To request openings of the bridge when the lift span is in the closed-to-navigation position, mariners may contact the AGR via VHF-FM channel 16 or by telephone at 205-654-4364.

Dated: August 25, 2012

Roy A. Nash  
Rear Admiral, U.S. Coast Guard  
Commander,  
Eighth Coast Guard District

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